



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 21 2019

The Honorable Jared Huffman
Chairman
Subcommittee on Water, Oceans, and Wildlife
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Chairman Huffman:

Enclosed are responses prepared by the Department to questions submitted following the Subcommittee's June 26, 2019, hearing on H.R. 644, H.R. 2459, and H.R. 3292.

Thank you for the opportunity to provide this material to the subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable McClintock
Ranking Member

Questions from Representative Grace Napolitano

Question 1. During the Bureau of Reclamation's budget hearing before this Subcommittee on April 4, 2019, you agreed to provide the Subcommittee with information on your federal negotiating teams for Indian water rights settlements. Please provide information on your active negotiation and assessment teams summarizing:

- a. The tribes involved in each settlement;**
- b. The states and other parties involved in each settlement;**
- c. The length of time that the federal teams have been involved in pre-negotiation and negotiation; and,**
- d. The remaining issues left to be negotiated by each of the 21 Federal negotiation teams and settlement parties.**

Response: Attached please find a table providing the information requested in a. through c. above. We are unable to provide information on remaining issues left to be negotiated as settlement negotiations are confidential among the parties. In general, settlement issues include quantification of water, cost of settlement, contributions of the parties to the cost, administration and jurisdiction over water use, and scope of waivers granted to the parties. The Department believes that any discussion of the details of a settlement should involve the affected tribes and other parties. If the Congresswoman is interested in a particular settlement, the Department will work with the parties to provide an appropriate briefing.

Questions from Representative Ruben Gallego:

Question 1. Please provide the basis for your statement to the Subcommittee that the estimated cost of the infrastructure project in H.R. 2459 will be as high at \$350 million. Please describe in detail the nature, extent and reliability of the work done by the Department that forms the basis for your statement.

Response: The Department of the Interior has concerns that the cost estimates are substantially low for the Diamond Creek alternative in the 2016 Appraisal Design Report Revised with Addendum (ADR) prepared by DOWL. DOWL's report provides an appraisal level estimate of approximately \$134.5 million for the construction of the infrastructure project (2016 price level). Appraisal Level cost estimates are not suitable for requesting authorization or construction fund appropriations from Congress. When we have attempted to use such estimates in past Indian water rights settlements to determine project costs, they have proven unreliable.

In order to get a sense of potential cost discrepancies, Reclamation undertook additional studies. First, Reclamation conducted a technical review of the Diamond Creek alternative which concluded that the DOWL cost estimate is substantially low. Reclamation identified a number of important project components that are underestimated in the design and cost estimate for the Diamond Creek alternative, including: the water treatment plant; storage tanks; pumping plants; intake and pretreatment facilities; pipelines; design and construction contingencies; and non-contract costs.

Based on the technical review, Reclamation then developed a preliminary-level construction cost range for the Diamond Creek alternative. The result is an estimated project cost ranging from a low of approximately \$220 million to a high of approximately \$340 million (not including a power infrastructure) (2016 price level).

Neither the DOWL appraisal level study nor Reclamations preliminary level cost study is reliable enough to say with certainty what the final costs of the Diamond Creek alternative might be. However, the wide discrepancy between the cost estimates is concerning to the Department especially in light of the cost gap we are experiencing in implementing the Aamodt Litigation Settlement Act, which was also based on an Appraisal level study.

Question 2. You stated that the USGS is "wrapping up" additional groundwater studies on and near the Hualapai Reservation. Please describe the scope of work of each study, the

anticipated completion date of each study and when the results of each study will be made available to the Hualapai Tribe.

Response: The USGS is completing a multiyear study, divided into 3 phases, to characterize and assess groundwater resources on and adjacent to the Hualapai Reservation. The study includes the Truxton Aquifer and groundwater resources within bedrock near Grand Canyon West. The first phase, a preliminary assessment of only the Truxton Aquifer beneath the Hualapai Reservation boundary, was published in 2016 (Bills and Macy, 2016). Phase 2 of the study is expected to be published by December 31, 2019, and will describe the groundwater resources in the Grand Canyon West area. The third and final phase of the study is expected to be published by March 31, 2020. This final report will summarize extensive ground-based and airborne geophysics data collected throughout the study area. The final report will also describe a computer groundwater model constructed by the USGS for the Hualapai Reservation that can assist in predicting how future groundwater-pumping scenarios may impact groundwater levels on the Hualapai Reservation.

Question 3. Please list with specificity all prior studies of groundwater on the Hualapai Reservation that have been conducted by the Department, including by any of its agencies, and for each such study, please state whether the study results indicate that groundwater can serve as a reliable long-term source of water for the Hualapai Tribe.

Response: The USGS has five reports or maps that address the topic of groundwater on the Hualapai Reservation. None of these USGS publications attempted to indicate whether groundwater could serve as a reliable long-term source of water for the Hualapai Tribe.

The first publication from 1962 is titled *Geology and promising areas of ground-water development in the Hualapai Reservation*. This study evaluated the geology and promising areas for groundwater development on the Hualapai Reservation. The results of this study indicated that “moderate quantities of good-quality water probably can be obtained from deep aquifers and small to moderate quantities can be obtained from the shallower aquifers” on the Hualapai Reservation. This report recommended four areas, including the Truxton basin, where additional water supplies could be developed on the Hualapai Reservation.

The second and third publications were published in 1986, and titled *Predevelopment hydrologic conditions in the alluvial basins of Arizona and adjacent parts of California and New Mexico* and *Description and generalized distribution of aquifer materials in the alluvial basins of Arizona and adjacent parts of California and New Mexico*. These hydrologic-investigations atlases, conducted at a relatively coarse resolution over much of Arizona, contained high-level summaries of the groundwater conditions of many alluvial basins, based on groundwater data

available at the time. The Truxton alluvial basin was included in, but was not the focus of, these atlases.

The fourth publication was published in 2011, and is titled *Water availability and use pilot; methods development for a regional assessment of groundwater availability, southwest alluvial basins, Arizona*. It assessed groundwater availability from southwest alluvial basins. This was a regional study that also included the Truxton alluvial basin but did not specifically look at groundwater resources on the Hualapai Reservation.

The fifth publication was published in 2016, and is titled *Hydrologic Framework and Characterization of the Truxton Aquifer on the Hualapai Reservation, Mohave County, Arizona*. This was the first phase the current multiyear USGS study. This report represented an initial estimate of the storage capacity of the Truxton Aquifer directly under the Reservation boundary. This report did not examine off-Reservation groundwater resources in the Truxton basin, as subsequent phases of the current USGS study will.

Prior studies:

Freethy, G.W., and Anderson, T.W., 1986, Predevelopment hydrologic conditions in the alluvial basins of Arizona and adjacent parts of California and New Mexico: U.S. Geological Survey Hydrologic Investigations Atlas HA-664, 3 plates, 1:500,000. [<https://pubs.usgs.gov/ha/664/>]

Freethy, G.W., Pool, D.R., Anderson, T.W., and Tucci, P., 1986, Description and generalized distribution of aquifer materials in the alluvial basins of Arizona and adjacent parts of California and New Mexico: U.S. Geological Survey Hydrologic Investigations Atlas HA-663, 4 plates, 1:500,000. [<https://pubs.usgs.gov/ha/663/>]

Twenter, F.R. 1962, Geology and promising areas of ground-water development in the Hualapai Reservation, Arizona: U.S. Geological Water-Supply Paper 1576-A, 1 plate, 38 p. [<https://pubs.er.usgs.gov/publication/wsp1576A>]

Tillman, F.D, Cordova, J.T., Leake, S.A., Thomas, B.E., and Callegary, J.B., 2011, Water availability and use pilot; methods development for a regional assessment of groundwater availability, southwest alluvial basins, Arizona: U.S. Geological Survey Scientific Investigations Report 2011-5071, 118 p. [<https://pubs.usgs.gov/sir/2011/5071/>]

Bills, D.J., and Macy, J.P., 2016, Hydrologic Framework and Characterization of the Truxton Aquifer on the Hualapai Reservation, Mohave County, Arizona: U.S. Geological Survey Scientific Investigations Report 2016-5171, 50 p. [<https://doi.org/10.3133/sir20165171>]

Question 4. You testified that the Department believes there is a significant amount of groundwater on the Hualapai Reservation that can be delivered "at a much lower cost" than water from the Colorado River. Please provide any studies the Department has done regarding infrastructure to access and deliver groundwater to Peach Springs and Grand Canyon West. Additionally, please describe in detail the design, capacity and estimated cost of the proposed groundwater infrastructure project that was studied.

Response: In 2018, Reclamation developed a preliminary-level design and cost estimate to supply 330 acre-feet of treated water to Grand Canyon West from the Truxton Aquifer near Peach Springs. This estimate included a 1,000 foot deep well, 45 miles of 6-inch pipeline, four pump stations, a chlorine injection system, and two storage tanks. The preliminary level construction cost was estimated to be approximately \$58 million, not including power infrastructure, or approximately \$88 million including power infrastructure (2018 price level). Based on this study, the Department believes there is a potential groundwater alternative that may be less costly than the DOWL ADR Diamond Creek alternative.

Question 5. You testified that the Department has a trust responsibility to protect a tribe's groundwater and you criticized a provision in the Hualapai settlement in which the Tribe waives its right to object to off-Reservation groundwater pumping. Can you please detail the legal underpinnings of your concerns with respect to this aspect of the settlement?

Response: Under the *Winters* Doctrine, the establishment of Indian and other federal reservations also implicitly reserves unappropriated water necessary to accomplish the purposes of those reservations. *Winters v. United States*, 207 U.S. 564, 576 (1908); *Arizona v. California*, 373 U.S. 546 (1963) (*Arizona I*). Both the Ninth Circuit Court of Appeals and the Arizona Supreme Court, as well as other courts, have held that the *Winters* Doctrine applies not only to surface water but also to groundwater. *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, 849 F.3d 1262, 1271 (9th Cir), *cert. denied*, 138 S. Ct. 468 (2017); *In Re The General Adjudication of All Rights to Use Water In the Gila River System and Source*, 989 P.2d 739 (Ariz. 1999) (en banc) (*Gila III*), *cert. denied sub nom. Phelps Dodge v. United States*, 530 U.S. 1250 (2000). *See also United States v. Shoshone Tribe*, 304 U.S. 111 (1938) (reservation for "absolute and undisturbed use and occupation" of land includes ownership of its "constituent elements," such as minerals and standing timber).

Consistent with these authorities, the Tribe's proposed settlement recognizes that the United States holds the right to groundwater in trust for the Tribe and contemplates the Tribe's continued use of on-Reservation groundwater sources, yet inexplicably surrenders the right to protect those uses from interference by off-reservation groundwater pumping. Groundwater

basins in the areas west of the Reservation are experiencing significant impacts from large-scale pumping related to agricultural development. If similar pumping occurs in the Truxton Aquifer, neither the United States nor the Tribe could protect its groundwater rights. The United States is not willing to waive its right to protect the Tribe's rights by agreeing not to object to off-reservation groundwater pumping in a State that relies so heavily on groundwater. Further, we believe that such a waiver sets an adverse precedent in Arizona and throughout Indian Country.

Question 6. You testified that the Administration "could support" a settlement with a cost "somewhere between \$60 to \$80 million." What is the basis for your statement and please describe how the Department arrived at the level of funding that it "could support." Do you believe that this amount of funding is sufficient for the Tribe to deliver water from the Colorado River to the Reservation?

Response: Please refer to the answer to question 4. The Department believes that the Tribe's reasonably foreseeable needs can be met with groundwater supplies that are less expensive to develop.

Question 7. You stated that the Department "does not believe" that the contribution of a private corporation to a water settlement "is the same" as a contribution by a state. Please explain the Department's understanding of section 5(d)(1)(B) of the Bill Williams Settlement Act of 2014, Pub. L. 113-223, which specifically provides that a contribution by Freeport Minerals Co. to the Hualapai Tribe economic development fund "shall be considered to be a non-Federal contribution that counts toward any non-Federal contribution associated with a settlement of the claims of the Tribe for rights to Colorado River water." In light of this language, does the Department believe that the Freeport contribution referenced in section 5(d)(1)(B) should count as a non-Federal contribution to the settlement to be ratified by H.R. 2459? If not, please explain why not.

Response: The Department acknowledges that pursuant to Pub. L. 113-223, the contribution made by Freeport Minerals Co. (Freeport), a private corporation, to partial Phase I of the Hualapai settlement is also to be considered as a non-Federal contribution to a comprehensive Phase 2 settlement. Freeport was the primary non-Federal interest benefited by the partial settlement in Phase I. Freeport's contribution was appropriate and critical to Phase I of the settlement; however, many interests in Arizona insisted Freeport's contribution be considered a non-federal contribution to a later comprehensive Phase II settlement as well. The Department believes there is a difference between private contributions to Indian water rights settlements and the contributions made by States and their legislatures. State contributions evidence the interest and support of the

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State on behalf of all its citizens to facilitating the resolution of contentious and disruptive disputes over Indian water rights issues.

SETTLEMENT STATUS CHART FOR NEGOTIATION AND ASSESSEMENT TEAMS

Team Name	Tribe/Pueblo	State	Other Local Parties	Date of Team Established	Current Status
Abousleman	Pueblos of Jemez, Zia, and Santa Ana	New Mexico	Jemez River Basin Water Users' Coalition	12/23/1992	After several years of hiatus and focus on litigation, settlement negotiations are resuming.
Agua Caliente	Agua Caliente Band of Cahuilla Indians	California	Desert Water Agency, Coachella Valley Water District	5/22/2018	After initial attempt to negotiate failed in 2018, the parties have been focused on litigation.
Coeur d'Alene	Coeur d'Alene Tribe	Idaho	North Idaho Water Rights Group	8/1/2015	After negotiations reached an impasse in 2016, the parties have been focused on litigation.
Confederated Salish and Kootenai Tribes (CSKT)	Confederated Salish and Kootenai Tribes of the Flathead Nation	Montana	Montana Reserved Water Rights Compact Commission (represented the State and state-based water rights holders)	7/21/1995	A Compact was approved by the Tribes and the State of Montana in 2015. A bill to approve the CSKT settlement (S. 3013) was introduced in May of 2016 but did not advance.
Fallbrook	Cahuilla, Ramona, and Pechanga Bands	California	Agri-Empire, Metropolitan Water District of Southern California, Eastern Municipal Water District, Riverside County	8/1/2008	The Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act was enacted in December 2016 as part of the Water Infrastructure Improvements for the Nation Act (P.L. 114-332). Negotiations continue with the Cahuilla and Ramona Bands claims.
Fort Belknap	Gros Ventre and Assiniboine Tribes	Montana	Montana Reserved Water Rights Compact Commission (represented the State and state-based water rights holders)	11/30/1989	A Compact was approved by the Tribes and the State of Montana on April 16, 2001. Bills to approve the Fort Belknap settlement were introduced in May 2012 (S. 3209) and July 2013 (S. 1394).
Havasupai	Havasupai Tribe	Arizona	Central Arizona Water Conservation District, Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users' Association	2/14/2018	After a failed attempt litigate certain issues in 2016, negotiations have resumed.
Hualapai	Hualapai Tribe	Arizona	Central Arizona Water Conservation District, Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users' Association, Freeport Mineral Corporation	9/7/2012	"Phase One" of a Hualapai settlement, the Bill Williams River Water Rights Settlement Act of 2014, enacted in December 2014, resolved a number of issues in the Bill Williams River basin. "Phase Two" would settle the Tribe's rights to the Colorado River and all remaining rights in Arizona. In May 2019, legislation (S. 1277 and H.R. 2459) was introduced to complete "Phase Two". The Department testified on the House bill in June 2019.
Kerr McGee	Pueblos of Acoma and Laguna and Navajo Nation	New Mexico	City of Grants, Village of Milan, Irrigators (Bluewater-Toltec Irrigation District, Seboyeta, Bibo, Moquino, Cubero, San Fidel, San Raphael), Atlantic Richfield Company	12/23/1993	Litigation is currently stayed, and negotiations are continuing.

Kickapoo	Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Kansas	None	2/14/2018	In June 2019, legislation (H.R. 3491 and S. 1977) was introduced approving the Kickapoo Indian water settlement. No hearing has been scheduled.
Lummi	Lummi Nation and Nooksack Tribe	Washington	Whatcom County, Sunset Water Association, Georgia Manor Water Association, Harnden Island View Water Association, Private landowners	9/5/1995	Negotiations have not been stalled for several years.
Navajo-Little Colorado River & Colorado River	Navajo Nation and Hopi Tribe	Arizona	Central Arizona Water Conservation District, Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users' Association, Arizona cities and towns (Flagstaff, Winslow, Holbrook, Taylor, Snowflake, Show Low, Eagar, and Springerville), Catalyst Paper (Snowflake) Inc., Arizona Public Service Co., Bar T Bar Ranch Inc., Crater Ranch, L.L.C., Flying M Ranch Inc., Aztec Land and Cattle Company, Limited, Aztec Land Company, LLC, Lyman Irrigation Company, Pioneer Irrigation Company, Show Low/Pinetop-Woodland Irrigation Company, Silver Creek Irrigation District, Lakeside Irrigation Company, Forest Lakes Domestic Water Improvement District, Pinetop-Lakeside Sanitary District, Euell Lyle Barnes, and Navapache Hospital District.	1/28/1991	In 2012, a settlement agreement was drafted and agreed to by the negotiation representatives of all the parties. A bill to approve the settlement (S. 2109) was introduced but neither the Navajo Nation nor the Hopi Tribe supported it. Negotiations remained at an impasse from 2012 through 2018. Recently, negotiations have resumed, but are still in the nascent stage.

Team Name	Tribe/Pueblo	State		Date of Team Established	Current Status
Navajo Utah	Navajo Nation	Utah	None	1/11/2013	In March 2017, a bill to approve the settlement (S. 664) was introduced in the 115th Congress but it did not move past the Senate. In 2019, legislation to approve the settlement (H.R. 644 and S. 1207) was introduced in the 116th Congress. The Department testified on the House bill in June 2019.
Ohkay Owingeh	Ohkay Owingeh	New Mexico	Santa Clara Pueblo, City of Espanola, Rio Chama Acequia Association, Asociacion de Acequias Nortenas del Rio Arriba, El Rito Ditch Association, Gallina-Capulin Acequia Association, La Asociacion de Las Acequias Del Rio Tusas, Vallecito y Ojo Caliente, Rio Santa Cruz Acequias, Santa Cruz Irrigation District	7/7/2015	Assessment underway.
Osage	Osage Nation	Oklahoma	None	12/18/2018	Assessment underway.
Tohono O'odham	Tohono O'odham Nation	Arizona	Central Arizona Water Conservation District, Central Arizona Irrigation and Drainage District, the Maricopa-Stanfield Irrigation and Drainage District	6/30/2011	Negotiations have recently resumed.
Tonto Apache	Tonto Apache Tribe	Arizona	Town of Payson, Central Arizona Water Conservation District, Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users' Association	7/15/2014	Negotiations are stalled.
Tule River	Tule River Indian Tribe	California	South Tule Independent Ditch Company, Tule River Association	2/9/1998	Negotiations are continuing.
Umatilla	Confederated Tribes of the Umatilla Indian Reservation	Oregon	Westland Irrigation District, Stanfield Irrigation District, Hermiston Irrigation District	8/29/2012	Negotiations are continuing.
Upper Gila River/ San Carlos	San Carlos Apache Tribe and the Gila River Indian Community	Arizona	Freeport-McMoran, Gila Valley Irrigation District, Franklin Irrigation District, San Carlos Irrigation and Drainage District	9/25/2000	Negotiations have been stalled for many years.
Walker River	Walker River Paiute Tribe, Yerington Paiute Tribe, Bridgeport Indian Colony	Nevada	Walker River Irrigation District	8/24/1999	Negotiations reached an impasse in 2006 and the focus is on litigation.

Yavapai-Apache	Yavapai-Apache Nation	Arizona	Central Arizona Water Conservation District, Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users' Association	6/30/2011	After years of impasse, negotiations have since resumed.
Zuni/Ramah	Zuni Tribe and Ramah Navajo	New Mexico	None currently	11/8/1993	After years of impasse, negotiations have since resumed.